

Littlefield Criticises Court.

The following report of Congressman Littlefield's address before the American Bar Association is taken from the columns of the Denver News:

"The Insular Cases" was the title of the address by Charles E. Littlefield, M. C., of Rockland, Me. He said:

"This year of our Lord has been one of unusual significance to the legal profession. It has seen universal and spontaneous homage paid by bench and bar, and country, to 'the great chief justice,' 'the greatest judge in the language.' He is conceded to be the greatest authority upon the construction of the constitution that ever adorned the most august tribunal known to our institutions. All agree that, more than any other man realizing that our 'constitution is formed for ages to come, and is designed to approach immortality as nearly as human institutions can approach,' he expounded and developed it, with scientific accuracy upon enduring lines, buttressed by accurate reasoning, 'establishing those sure and solid principles of government on which our constitutional system rests.' The supreme court of the United States suspended its sittings in order that through its distinguished chief it might witness 'to the immortality of the fame of this sweet and virtuous soul, whose powers were so admirable and the results of their exercise of such transcendent importance.' It is certainly an interesting and significant fact, that at the same term during which these ever memorable exercises occurred, that court rendered a judgment by a disagreeing majority of one, overruling a case which had withstood unimpaired the assaults of time for eighty years. A case decided by the same tribunal by a unanimous court, whose reasons therefor were luminously stated with his usual accuracy and ability by the incomparable Marshall. A judgment clearly inconsistent with other judgments rendered on the same day, without any opinion of the court upon which to rest, endeavored to be sustained by the opinions of different justices, in irreconcilable conflict with each other. A judgment involving fundamental constitutional questions of more vital and transcendent importance than any hitherto determined.

"The insular cases, in the manner in which the results were reached, the incongruity of the results, and the variety of inconsistent views expressed by the different members of the court, are, I believe, without a parallel in our judicial history. It is unfortunate that the cases could not have been determined with such a preponderance of consistent opinion as to have satisfied the profession and the country that the conclusions were likely to be adhered to by the court. Until some reasonable consistency and unanimity of opinion is reached by the court upon these questions, we can hardly expect their conclusions to be final and beyond revision. A statement of the cases is essential to show what was actually decided. The cases were: De Lima vs. Bidwell, Downes vs. Bidwell, Huus vs. New York and Porto Rico Steamship company, Goetze vs. United States, Crossman vs. Same, and Armstrong vs. Same.

"In De Lima vs. Bidwell the question was whether after the cession of Porto Rico to the United States, by the treaty of Paris, it remained a foreign country within the meaning of the tariff law, the action being brought to recover duties collected prior to the passage of the Foraker act, under the Dingley act, which provided that 'there shall be levied and collected and paid upon all articles imported from foreign countries,' etc., certain duties therein specified. The court held 'that at the time these duties were levied Porto Rico was not a foreign country within the meaning of the tariff laws, but a territory of the United States; that the duties were illegally exacted and that the plaintiffs are entitled to recover them back.' Mr.

Justice Brown delivered the opinion of the court, and with him concurred Mr. Chief Justice Fuller, Mr. Justice Harlan, Mr. Justice Brewer and Mr. Justice Peckham. Mr. Justice McKenna dissented, and drew an opinion in which Mr. Justice Shiras and Mr. Justice White concurred, and Mr. Justice Gray dissented in a short note. Downes vs. Bidwell was an action to recover duties collected under the Foraker act, upon 'merchandise coming into the United States from Porto Rico,' to use the peculiar and somewhat ungainly language of that act. It involved the constitutionality of that part of the act, and five members of the court concurred in a judgment holding that part of the act constitutional. Mr. Justice Brown announced the conclusion and judgment of the court, affirming the judgment of the court below. He did not pronounce its opinion, but rendered one of his own. Mr. Justice White, with whom concurred Mr. Justice Shiras and Mr. Justice McKenna, rendered an opinion uniting in the judgment of affirmance. Referring to Mr. Justice Brown's opinion, he stated that the reasons which caused him to concur in the result 'are different from, if not in conflict with those expressed in that opinion, if its meaning by me is not misconceived.' Mr. Justice Gray concurred in substance with the opinion of Mr. Justice White, but summed up so as to 'indicate' his 'position in other cases now standing for judgment.'

"Technically speaking, there is no opinion of the court to sustain the judgment. Mr. Chief Justice Fuller, with whom concurred Mr. Justice Harlan, Mr. Justice Brewer and Mr. Justice Peckham, delivered a dissenting opinion, and Mr. Justice Harlan delivered a dissenting opinion giving some additional observations. Dooley vs. United States was a suit to recover duties collected upon goods exported from New York to Porto Rico, partly before and partly after the ratification of the treaty, but in every instance prior to the passage of the Foraker act. As to the duties collected prior to the ratification of the treaty the court were unanimous in holding that they were legally exacted 'under the war power.' The same justices who concurred in the De Lima case concurred in this as to the duties collected after ratification. Mr. Justice Brown delivered the opinion of the court, holding that the 'authority of the president as commander-in-chief to exact duties upon imports from the United States ceased with the ratification of the treaty of peace, and her right to the free entry of goods from the ports of the United States continued until congress should constitutionally legislate upon the subject.' The justices who dissented in the De Lima case dissented in this. Mr. Justice White delivered the dissenting opinion. Huus vs. New York and Porto Rico Steamship company raised the question as to whether trade between the United States and Porto Rico was, after the passage of the Foraker act, 'coasting trade,' and the court were unanimous in holding that it was. Goetze vs. United States and Crossman vs. Same involved the questions determined in the De Lima case, and were controlled by that case. Armstrong vs. United States was controlled by the Dooley case. Two cases argued at the same term remain undecided. Fourteen Diamond Rings vs. United States. Rings brought from the Philippines into the United States after the ratification of the treaty of peace, without the payment of duty and seized for non-payment, and Dooley vs. United States, raising the validity of duties collected upon goods 'coming into Porto Rico from the United States' after the passage of the Foraker act.

"In the unsettled condition of the court it is hardly worth while to speculate as to the result in these cases. The diamond rings case no doubt depends upon what the court holds the status of the Philippines to be, whether civil or military. If the Dooley case is controlled by the Downes case there would seem to be no good reason why it should not have been decided. That it was not,

raises the inference that it would be decided adversely to the government, or that there was a greater difference of opinion than usual with reference to it. Mr. Justice Gray is the only one who indicates his 'position' in this case. In his opinion in the Downes case he says, after referring to duties 'established on merchandise and articles going into Porto Rico from the United States, or coming into the United States from Porto Rico,' as temporary:

"The system of duties (clearly including imports and exports) temporarily established by that act during the transition period, was within the authority of congress under the constitution of the United States."

"No other member of the majority is prepared to indicate that Porto Rico while a foreign territory as to the revenue clause of the constitution, so that imports therefrom are dutiable, is not also foreign within the meaning of that other clause of the constitution, relating to revenues, which reads, 'No tax or duty shall be laid on articles exported from any state.' The converse must be true as to goods going the other way, and they would be exports from some state to 'such island' and hence obnoxious to this clause. Apprehending this, perhaps, Mr. Justice White in the same case always follows the ungainly language of the act in describing this commerce.

"Just how goods 'coming into Porto Rico from the United States' can be other than exports from some state we cannot well see, but with these opinions before us it will not do to say that it will not be so held, and some inconsistent reasoning given therefor. Upon this point the language of Mr. Justice Miller in Woodruff vs. Parham, 8 Mall, 123, is suggestive:

"Is the word 'impost' here used intended to confer upon congress a distinct power to levy a tax upon all goods or merchandise carried from one state into another? Or is the power limited to duties on foreign imports? If the former be intended, then the power conferred is curiously rendered nugatory by the subsequent clause of the ninth section, which declares that no tax shall be laid on articles exported from any state, for no article can be imported from one state into another which is not, at the same time, exported from the former."

"It is difficult to see how refusing to call a duty an export duty; when it is in fact such, can change its character.

"The Downes case is the only one that passes upon questions that apply to permanent conditions, or that attempts to furnish a foundation for a permanent government policy. All that is decided by that case is that as to 'merchandise coming into the

United States from Porto Rico' congress is not restrained by the constitution in imposing a discriminating tariff against Porto Rico. In other words, as to imports from Porto Rico congress can constitutionally discriminate. It may be said that the case involves other absolute powers, but that is as far as the case itself goes. Whether all the other constitutional restrictions apply, and if not, which apply, remains to be determined. Four of the majority (and I include Mr. Justice Gray, as he says that in 'substance' he agrees with the opinion of Mr. Justice White) are evidently appalled by the enormity of the argument that would deprive Porto Rico of all the constitutional guarantees as to civil rights. They repeatedly so declare in the opinion of Mr. Justice White, as though fearful that it might be inferred that they entertained that view. * * *

"It is unfortunate that Mr. Justice White, with his keen appreciation of the sacredness of constitutional rights, in order to sustain his conclusions in this case was obliged to use a train of reasoning that manifestly kept pressing upon him the idea of despotic power, and thus required this continual negation. It required him to 'protest too much.' Nevertheless just what will be held 'applicable provisions' we do not know, but as the four dissenting justices hold that the constitution now applies to Porto Rico to that extent, we can

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as Foreign
Country.

Status
of
Philippines.